

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 22, 2023

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 7:59 a.m.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Winder** moved to send the Gubernatorial Reappointment of Shane Gehring of Nampa, ID to the Bingo-Raffle Advisory Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Lee** moved to approve the minutes of March 8, 2023. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.
Senator Bernt moved to approve the minutes of March 15, 2023. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

S 1194 **ALCOHOLIC BEVERAGES - Amends existing law to provide an exemption from a certain requirement and to provide a requirement for a license issued to a theater.** **Senator Anthon** asked that **S 1194** be sent to the floor with a **do pass** recommendation. He found there was not a good bridge from statute to the regulatory side of State government. This was an attempt to fix two incidences in one bill. He disclosed Rule 39(H), reporting he worked for a city. He shared an example in which a city, in the course of redevelopment, acquired a bar with a liquor license. The city was not looking for a liquor license but the State informed the city had to sell liquor or lose the money it spent for the license with the property. Rather than being forced to sell liquor or lose the investment, this bill would offer a grace period of three years before the city had to sell liquor. The other scenario related to a special license granted for historic theaters that many communities used for receptions or conventions. In order to generate revenue to keep up the theaters, the communities were granted liquor licenses. The problem was, when you got the liquor license, the State required the community to serve as many as two drinks a day or lose the license. It became impossible to hold the license and accomplish the policy purpose that legislature set forward. This bill reduced the regulatory scheme on the theaters so they only had to serve drinks a couple of times a year to keep up the license.

MOTION: **Senator Lee** moved to send **S 1194** to the floor with a **do pass** recommendation. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

BONDS AND LEVIES - Amends existing law to require that a taxing district include certain information when communicating with voters regarding a bond or levy proposal. **Senator Ricks** said this bill was based on communications by entities proposing bonds and levies (Attachment 1). The bill related to truth in lending laws, or disclosures.

Byron Stutzman stated school districts were supposed to be impartial in providing information about bonds and levies. He felt financial taxpayer information was omitted because the flyers (from North Freemont School District) did not tell the price of the \$250,000,000 bond. A postcard was provided to voters, which cost \$12,000 of taxpayer money to print, and the information on the card said the bond cost would be \$18 more a month. **Mr. Stutzman** thought the school district crossed a line from informing to campaigning by omitting financial information. This bill said if taxpayer money was used, ballot language had to include how much it cost, interest rate, and cost per 100,000.

Senator Lee referenced page 3, lines 22-23, prohibiting any additional information on any other bond, levy, or financial matter. **Mr. Stutzman** said **H 286** restricted content as to what was on the ballot and kept the discussion from crossing into campaigning. As of July 2022, the money school districts spent campaigning was supposedly reported to the Secretary of State, regardless of support or opposition to the bond or levy.

Senator Winder referred to page 2, lines 18-19, and to page 3, lines 22-23, and asked why **Mr. Stutzman** was opposed to other information being sent out at the same time. **Mr. Stutzman** said the bond/levy information should inform about specific ballot measures to avoid the perception a school district was campaigning.

Senator Anthon asked what should not have been allowed on the flier. **Mr. Stutzman** thought everything on the flier was allowable and paid for by taxpayer dollars, except the line that it was only going to cost \$18 per month. He said it should have ballot language liked, "This bond is going to be \$250,000,000, expected interest rate of 3.8 percent over 20 years, and the cost to taxpayers would be \$140 per 100,000. **Senator Anthon** agreed but questioned saying the school district could not say anything else on the fliers. **Mr. Stutzman's** reservation was, what was and was not allowed on a taxpayer paid for piece of literature or postcard.

Senator Toews referred to page 3, lines 22-23. He said it was confusing to deal with multiple bonds/levies on the same communication. He read, "The taxing district shall not include additional information regarding any other bond, levy, or financial matter in the communication." He felt more information was necessary and relevant for voters. **Mr. Stutzman** agreed, but pointed to the postcard advertising it was only going to cost taxpayers \$18 per month. He wanted restrictions on the information put on literature that was paid for by taxpayers.

Dale Lane, Idaho Rural School Association and the Idaho Association of School Administrators, spoke against **H 286**. He had no concerns about the information in Idaho Code §§ 34-913 and 34-914. His concern was in not allowing districts to provide patrons with all of the information for voting. By disallowing the mention of existing bonds, levies, or any financial information, it was not an accurate plan. If the district had a current bond or levy on the books, patrons should know that. The bill would prohibit districts from disclosing the full tax impact of any levy, which was in conflict with Idaho Code § 74-605. He commented on pending bill in the legislature that would remove school district voting dates. If the district

needed to run the bond and a supplemental, they might have to be on the same election date.

Quinn Perry, Idaho School Board Association, opposed **H 286**. She noted Mr. Lane's reference to Idaho Code § 74-605, the Public Integrity and Elections Act (Act), that explicitly prohibited school districts from advocating for a bond or levy. **Ms. Perry** believed this bill conflicted with the Act. By preventing certain information, it could limit information that another levy might be expiring. She asked for a no vote.

Marc Gee, Superintendent of Middleton School District, saw the value in sharing all financial information on anything published regarding bonds. His concern with this bill was that it disallowed other information. For example, when assessing the impact a bond might have on taxpayers, it was important for taxpayers to have all the facts. Middleton School District had a bond to expire in 2028. If the school district attempted a bond now and it passed, it would be five or six years during which the two bonds overlapped. It would be difficult to keep the payment the taxpayer was responsible for consistent over time. During the overlap years, the majority of the payment would be applied on the existing bond with only a small amount going to the newer bond. In remaining years, the whole amount would apply to the new bond. Managing debts like that kept payments consistent. But, the wording in **H 286** would not allow the school district to explain the process to constituents until after passing the bond. He wanted to share as much information as possible to assure transparency for the taxpayers.

Senator Winder asked if lines 22-23 were deleted, would that satisfy. **Mr. Gee** stated he had no concerns about putting required financial information on mailers to his patrons.

Seth Grigg, Executive Director of Idaho Association of Counties, opposed **H 286**. He concurred with earlier comments. He had no problem with language to disclose the tax per 100,000 in value. The issues for him were on lines 22-23, page 3, and lines 18-19, page 23, which prohibited disclosure of other financial information. This not only impacted school districts but also counties with obligation bonds and override levies.

Kelly Packer, Association of Idaho Cities, said she opposed **H 286** for the same reasons as previously stated by others.

Senator Ricks asked the committee to send **H 286** to the 14th Order of Business for possible amendments to address the lines in question.

MOTION:

Senator Winder moved to send **H 286** to the floor with the recommendation it be sent to the 14th Order of Business for possible amendments. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

H 330

Relating to Tobacco Products Taxes - Amends Section 63-2552, Idaho Code. **Senator Bernt** explained this was a small business, lowering taxes bill. It capped cigar sales taxes at \$0.50 to make it easier to compete with businesses in other states and online. This and an earlier bill were basically the same and viewed as a tax bill. The House of Representatives thought it should have originated in the House so a new RS number was assigned. It passed in the House and now it was before this Committee.

MOTION:

Senator Toews moved to send **H 330** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

Relating to Minors - Amends Section 18-1514, Idaho Code. Senator Carlson provided binders to the Committee members containing samples of spreadsheets and books found in various public school libraries or public libraries in Idaho. She noted literary works were not included in the sampling. She emphasized this bill did not ban books. It was up to the library or school to take reasonable steps to remove harmful materials from minors. The institution, not the librarians, would be liable for damages if a minor was provided access to harmful materials. Idaho did not allow minors to have alcohol, tobacco, drugs, guns, some types of glue, aerosols, or obscene materials. The bill focused on keeping harmful material from minors and held institutions liable when and if children were damaged by harmful materials provided by the libraries or schools. Idaho wanted to send a clear message of protection of children. The schools and libraries knew this was an issue last year and did not address it. Public schools were constitutional institutions and should be worthy of trust to care for children. Harmful material accessed by minors harmed the child's brain, his view of sex, his view of people, his quality of life, and caused children to harm other children. Whatever was fed to the brain was what it learned to love.

Representative J. Crane read from the Idaho Constitution, Article 3, Section 24, "Promotion of Temperance and Morality, " In a 2003 landmark case, *The American Library Association v The United States*, all members of the Supreme Court ruled there was a legitimate and compelling interest in protecting young library users from material inappropriate to minors. In a poll conducted this past December, 74 percent of Idaho voters believed public schools and community libraries should keep obscene, harmful material from minor children. **H 314** required the public schools and libraries to take reasonable steps to restrict access of such material to minors. **Representative Crane** reiterated this was not a bill to ban books. As taxpaying parents, it was expected that children would not unexpectedly be exposed to harmful materials. If such materials were distributed to a minor outside the library, the consequences could be jail and a fine. But inside the library, there was protection. Why? He addressed what he saw as two false narratives: 1) Punishing librarians. The bill used common law doctrine. The library board or trustees would be held responsible, not the librarian. **Representative Crane** shared his experience on the Boise Public Library website. On the navigation bar, he found the board structure and its responsibility, "The library board sets policy for the operation of the public library." 2) Children have access to harmful materials on their phones. This bill was about taxpayer-funded libraries, not personally owned devices. In an airport book store, the magazine section had black slipcovers over some magazines. It was commonly understood the magazine with the black slipcover was not publicly acceptable by community standards to be on display. **Representative Crane** said the bill was not asking that material be removed, just take reasonable steps to restrict minors from access to the material. In discussions for this legislation, the library group did not agree with the \$2,500 damage, which was a reduction from statutory damages of \$10,000 in the earlier bill. He added, there should not be a revolving door on the damages. A child could not bring forth a lawsuit; it had to be a parent or legal guardian filing a lawsuit. The statute of limitations language was removed. Idaho Code § 6-906(a) was the statute for tort claims. Cause of action for the prosecuting and injunctive relief was included.

Senator Winder pointed out some areas in the bill that referenced a minor could make a claim. **Representative Crane** clarified the child could be awarded damages, but could not bring the claim. The child would be the prevailing party beneath their parent or guardian.

Senator Wintrow asked about the poll that was cited. **Representative Crane**

stated Idaho Family Policy Center conducted the poll. **Senator Wintrow** said when she opened the binder given to her, she saw samples of harmful material like *The Kite Runner*, *the Bluest Eye*, and *the Handmaid's Tale*. She said the examples were Pulitzer Prize winning works and commented there was violent, graphic material found in the Bible. She asked about the application of the Miller Test. **Representative Crane** said the Miller Test was used to determine harmful material to minors. He responded, the Bible had literary and historical value so it did not fit qualifications for removal under the Miller Test.

Senator Lee acknowledged colleagues were vilified for not supporting **H 139**. She asked Representative Crane to address some problems in the earlier legislation. **Representative Crane** acknowledged no bill was perfect so, through group meetings, some of the language was cleaned up. He saw this as a good bill as it was amended.

Senator Anthon expressed reservations about the civil cause of action.

TESTIMONY:

Blaine Konzatti, President of Idaho Family Policy Center, talked about the defensibility of legislation and the standard to define obscenity. He disclosed the legislation used a modified version of the Miller Test, which applied to minors. Page 1, line 31, provided a definition for harmful to minors. He explained a civil cause of action, as governed in Title 5, allowed the family to recover damages for harm that was suffered because the child was exposed to harmful material. All procedures of Title 5 would be applicable to any action brought under this legislation. The title required a minor person to appear in court with a guardian or guardian ad litem.

Senator Ruchti provided a scenario where a child saw bare breasts in a book. He asked Mr. Konzatti to explain how the child was damaged to such an extent he deserved money damages. **Mr. Konzatti** said bare nudity was not obscene, it did not meet the requirements of the Miller Test. A child exposed to harmful material suffers emotional and psychological harm, as documented in academic literature and case law. **Senator Ruchti** asked if a 17 year old who read the *Handmaid's Tale* should be awarded money damages for a book that fit Mr. Konzatti's definition of harmful material. **Mr. Conatti** stated the Miller Test was a subject test rooted in the reasonably prudent person test.

Molly Nota, a library worker for 10 years, said she was invested in what her child consumed at the library. She was trained in building library collections and saw this bill as unnecessary. If the bill passed it would negatively change how libraries operated. Librarians believed in age-appropriateness and obscenity laws. They served the entire community and she did not want to see libraries face causes of actions. She feared this bill would make Idaho a pro-censorship state. She saw this law as being about control, not protection of children.

Michael Hahn said library associations would say obscene material did not exist in any Idaho library and that this was a ruse. He said the binders only gave the Committee a small sampling of the obscene material found in libraries. He thought a solution could be a rating system for parents. He was not suggesting removing books, but asking that parents be given information about the books like they get for movies and video games. He said publishers designed material to attract children. He asked that Idaho children be protected.

Robert Wright, Idaho Falls Public Library, said this was not previously an issue. He resented the phrase "any other material harmful to minors." He provided examples of harm to children as children who never docked sheep, or branded cattle. He suggested those events might be harmful for children to see. He saw this as a broad bill and wondered what was taken away from children. He was

concerned about limiting access. He claimed an told him, if this bill passed, no one under age 18 could go above the first floor at the Idaho Falls Public Library unless accompanied by a parent. He said this bill needed amending.

Nina Beelsey referred to the Preamble to the Constitution. Three of the six reasons for it were to establish justice, ensure domestic tranquility, and promote the general welfare. She said Article 3 of the Idaho Constitution stated the legislature should further all wise and well-directed efforts for the promotion of temperance and morality. For two years, residents in Kootenai County showed the community library network and the Coeur d'Alene Library that the youth sections of the libraries contained hard core, sexually explicit, obscene materials. She found the library officials uncooperative, denied what they were confronted with, and the books remain on shelves. With this bill, if library official were challenged and the board of trustees failed to relocate materials, a parent could bring a civil action against the board of trustees. According to United Families International's booklet on pornography, where porn was permitted, rape, murder, and child molestation increased. The library board and legislature said it was the parent's responsibility, but the library boards and legislatures were responsible for distributing obscene materials to children using tax dollars. Title 18, Chapter 15 of Idaho Code statute said it was unlawful to distribute obscene material to children, unless it was a school or library, which was exempt. She felt the State institutionalized harm to children.

Mike Kane, Idaho Counties Risk Management Program (ICRMP), represented and defended in court a majority of entities in the state. His concerns were issues with the cause of action to the cost of taxpayers. While it was the intent of the sponsors to include this in the Tort Claim Act, it did not say that in the bill. Since the cause of action was not identified as being in the Tort Claim Act, the courts would assume it was the legislative intent not to put it there. He urged this bill be sent to the 14th Order of Business for amendments to include a reference to the Tort Claim Act.

Senator Anthon said there were other incidences in law where the legislature put a civil cause of action on the books without referencing the Tort Claim Act. The courts ruled it was not under the umbrella of the Tort Claim Act because it was not referenced. **Mr. Kane** said defense of employees was in Title 6, referencing *Van v Port Neuf Medical Center*. The justice said it was not assumed that because it was not in the Tort Claim Act, the legislature intended it to be there. **Mr. Kane** said it was an important fix to this bill.

Marianna Cochran, Clean Books for Kids, spoke in support of the bill. Within nine libraries, her group identified hundreds of sexually explicit, pornographic books that described sex between adults and minors, orgies, parental rape, sex abuse, prostitution, and sexual torture. She cited the book *Boy Toy*, which was on display in the Coeur d'Alene Library teen section. It was about a 12 year old boy having a sexual relationship with his married teacher. In 1972 the Idaho Legislature codified specific definitions of obscenity and sexually explicit materials for minors and deemed them inappropriate, illegal, and a contributing factor to crime, juvenile crime, and a basic factor in impairing the ethical and moral development of youth. In 2016, the American College of Pediatricians said the consumption of pornography was associated with many negative emotional, psychological, and physical health outcomes to include increased rates of depression, anxiety, acting out, and violent behavior. She asked the Committee to advance this bill.

Laura Delaney, co-owner of Rediscovered books, felt this bill addressed a nonexistent problem. She stated libraries did not hold harmful material but were

the stewards of collections and facilitated free/open access to information that supported its patrons. She stated rating systems were not government entities and it would be overreach for a government entity to do a rating system. The Miller Test, in her opinion, was not equivalency. She referenced court cases in which decisions were made that school authorities could not remove books because they did not like the ideas contained in them. She stated **H 314** promoted a narrow political interest and she urged a no vote.

Matthew Jensen believed previous testimony intersected with personal experience. He recounted his work in libraries as a youth. He felt the discussion was backward and that we should be asking, why do children need to see adult material. He agreed with not restricting material from adults, but considered it different with children.

Lance McGrath, Idaho Library Association, opposed this bill. He felt it would require an overhaul of all libraries to protect children from constitutionally protected information. He argued libraries did not provide material harmful to minors. He was against censoring because something was unappealing to some. He reported a board approved selections of books to be included in the library. Parents had rights to guide their children but not to dictate to other families. He said the library mission was to serve everyone in the community. He was against infringing on free speech and the imposition by government.

Senator Toews asked if Mr. McGrath believed some content was appropriate for a 17 year old but not a nine year old. **Mr. McGrath** agreed. **Senator Toews** asked if books were separated based on age differences. **Mr. McGrath** said libraries followed a segregated selection policy, depending on the size of the library. **Senator Toews** suggested this bill might be another step in setting age appropriate boundaries. He reminded that the legislation was not removing material from libraries, it was asking that inappropriate material for minors be put in another section. According to **Mr. McGrath** that was redundant. He said policies and practices were already in place to do that.

Senator Winder recalled when some magazines were put in age appropriate places at grocery stores. He did not see this as a First Amendment argument when all you had to do was separate material, not remove it, but separate it. **Mr. McGrath** stated it was a First Amendment matter because it tried to apply the lowest bar for access to materials to the oldest member of the minor category. He said something inappropriate for a six year old should not be made inaccessible to a 17 year old. He found the bill's language was overly broad and vague.

Senator Anthon understood the testimony claiming if this bill passed, a major overhaul would be required of library collections and policies. **Mr. McGrath** responded that the age restriction and need for an affidavit signed by parents in order for parents to take children to the library would be unreasonable.

Senator Wintrow questioned the term appropriate because it varied from person to person. She wondered who determined appropriateness. She asked Mr. McGrath's take on section B, page 2, line 13, "...the quality of any material or any performance or of any description or representation in whatever form which as a whole has the dominate effect of substantially arousing sexual desires in persons under the age of 18 years." She said that section bothered her. **Senator Wintrow** defined pornography as the violent representation and submissiveness of sexual acts with children or adults. **Mr. McGrath** agreed that the language was vague and subjective. He acknowledged he might make different choices for his child but did not think it right to restrict from everyone else in the library.

Karadee Claridge, as a home school parent, used the library weekly and supported the bill. Over the last few years, she became aware of a trend to sexualize children through books. She believed the trend became noticeable enough that people were speaking out. For two years Ms. Claridge attended library board meetings and provided public comment. She consistently communicated with her library director and board members and challenged books. Her attempts were responded to with the comment it was the parent's choice regarding books for their children. Some of what was displayed in her library was what she considered evil and the exemptions that protected libraries was being exploited. **Ms. Claridge** said free speech did not mean you could place pornography in front of children. She encouraged helping library boards and directors to protect children.

Isabella Burgess spoke in opposition to the bill. She quoted, "Where they burn books, they will in the end burn human beings too." She claimed bills like this was where fascism began. First they ban books, then they ban us. In her opinion, this bill was not about the safety of children, it was about fear, bigotry, hatred, and erasing lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. **Ms. Burgess** identified as a student, library worker, and lesbian. She declared **H 314** proposed a slew of structural problems and constitutional violations, especially in category three, where homosexuality was included in the definition of sexual conduct. She claimed librarians were being defamed by remarks by some and by this bill. She stated her existence was not a threat to children.

Rachelle Odesen, a trustee for Community Library Network. As a parent, educator, library member, and trustee, she supported this bill. She claimed children were being harmed by material in some Idaho libraries and schools. She believed some individuals exploited obscenity exemptions. **Ms. Odesen** asked her library board if children's programs on prostitution, pedophilia, and bestiality were exempted. She was shocked when a board member told her that children had a right to be exposed to everything. She continued that last year a local teacher and a library director were on an Human Rights Education Institute (HREI) book panel discussion. The panel, with no dissent, stated it was really important that libraries have provocative books that parents do not want their children to have. Parental choice was purposely bypassed. Children had a right to their innocence and mental health. **Ms. Odesen** cited Arizona as not having library exemptions. Its main research library said it was easy and cheap to comply with the law and no one was ever charged. She felt there was something wrong when adults demanded to be able to promote obscenity and pornography to minors. She noted her tax money was being used to contribute to the delinquency of minors. She urged a yes vote to protect children from government-sponsored damage. She questioned why people were protesting if there was no porn in the minor's sections of libraries.

Erin Kennedy, Intellectual Freedom Chair for the Idaho Library Association, urged a no vote on **H 314**. As government entities, a public school's or public library's ability to restrict the First Amendment rights of minors was narrow. She stated the entities could not restrict just because some people found an item to be personally offensive. The material had to be considered obscene per Idaho Code. To be considered obscene, the item must violate all three components of the Miller Test, and the work must be considered as a whole. Individual passages or pages could not be considered when determining obscenity. This legislation was intended to coerce libraries into removing constitutionally protected materials via threats of loss of insurance and costly litigation. Libraries that restricted or removed constitutionally protected materials from minors could be faced with lawsuits contending the institution violated the First Amendment. **Ms. Kennedy** explained that libraries built collections with careful consideration of what was

or was not appropriate for children, and took reasonable steps to keep certain materials from minors. She cited collection development policies, appropriately shelving materials, and requests for reconsideration policies that parents could complete. This bill did not identify what reasonable steps were expected beyond what she noted. **Ms. Kennedy** said discussions should be between parents and children regarding reading material, not the librarian.

Chandler Hadraba, Republican Vice Chair for Legislative District 16, and a former employee of the Hustler store, showed three books: 1) An instructional book for couples on enhancing their love life; 2) the March edition (lesbian) of Hustler magazine; and 3) Body Music, a book available at the library. He explained a way to avoid obscenity laws was to change from photographs to animated depictions of sex acts. He said the Hustler store, open to the general public, operated in 48 locations throughout the United States. It complied with all federal, state, and local obscenity laws. Why could not the library and librarians meet the same standards as Larry Flynt and Hustler Corporation. **Mr. Hadraba** questioned how some chapters in books with obscene titles was informative literature. He said it was a picture book to instruct and inform children. He urged the Committee to pass the bill.

Rebecca Lemmons, a trustee of the Boise Public Library, opposed the bill because of its subjectivity. She wanted books that fit her family's values. The role and responsibility of regulating what children accessed was not the role of the school or library. Common Sense Media did a study that showed 58 percent of teens survey respondents ages 13-17 accidentally accessed sexually explicit materials during online exploration with friends by clicking on a web link. Of the students surveyed, zero accessed the material in a library. If parents had concerns about what their children accessed in the library, there were policies and procedures in place that they could engage in to review concerns. As a trustee, the process was provided early in her orientation. **Ms. Lemmons** was also concerned about the punitive nature of the bill. If you did not like a book, do not check it out. The State should not be able to control what she or her family could read

Jackie Davidson, a precinct committee woman who spoke in favor of **H 314**, said last year no one believed these books existed in the library. She referenced books she picked up at her local library. Call Me Max, a transgender book, was found in the youth picture book section. The book taught children that if someone told their parents the child was a boy or a girl, it was a mistake. In the youth section (3rd - 5th grade section), she found Sex is a Funny Word. She said the book described sexual body parts and how to pleasure yourself. At the teen section, she found Red Hood. **Ms. Davidson** said the book was full of obscenities, obscene sexual activities, violence, and profanity. The book was rated four out of five as should not be given to minors. According to **Ms. Davidson**, the books were shelved where anyone could pick them up. She felt the bill was important and noted librarians refused to consider some of the books harmful to children and refused to shelve them in a separate section for adults.

Kathy Griesmyer, Government Affairs Director for the City of Boise, opposed the bill. She emphasized the private civil cause of action created an environment of fear and censorship. She referred to language in the bill on page 2, section 2, line 35, "...notwithstanding any other provision of law, a public or school library or an agent there of shall not promote, give, or make available..." **Ms. Griesmyer** said having a book in a library collection that one parent may agree/disagree with, was a starting point of the civil cause of action. In subsection 3, line 48 referred to the ability of a minor and parent/guardian to bring civil cause of action. On page 3,

subsection 4 said, "...any minor or parent or legal guardian can move forward in bringing a civil cause of action..." Subsection 5 allowed a county prosecutor or an attorney general to bring a second case. **Ms. Griesmyer** said she knew what the affirmative defense was to accomplish, but she felt it created questions in how to prepare for an affirmative defense. She encouraged moving this bill to an amending order.

Senator Wintrow asked for an explanation about the affirmative defense. **Ms. Griesmyer** explained it was an affirmative defense from civil liability if you could provide materials referred to in subsections A and B and if the minor in question was 18 years of age or older, or you verified the minor was accompanied by an adult when this happened. **Ms. Griesmyer** said this still allowed a civil cause of action to be brought forward and the language did not prescribe how verification was to be created.

Steven Keyser, a former law enforcement officer, expressed concerns about the elements of grooming and normalizing children to sexual content. He did not think some libraries did a good job of providing the protection expected. In the bill, page 1, line 36 talked about material that appealed to the prurient interest of minors and was offensive to prevailing standards. The bill acknowledged it was looking at material as a whole that had a dominant effect of substantially arousing sexual desires. He said courts agreed that sexual stimulation of children was associated with criminal activity. He said there was a relationship between increased criminal activity when children were prematurely sexualized with some materials.

Senator Carlson closed by saying there was no First Amendment right to disseminate material harmful to minors. Libraries and schools needed to take reasonable steps and create reasonable policies to protect children through local control. The damages in the bill were intended to cause all institutions to address taking reasonable steps. Idaho Code § 18-1514 already addressed harmful to minors and no definitions were changed in this bill. The sponsors were agreeable to sending the bill to the amending order to add the wording on page 3, line 1, "subject to the Idaho Tort Claims Act."

Senator Winder recalled last year H 666 was presented. He did not support that bill because it seemed to focus on librarians and he believed it needed to go after elected officials. He felt this bill addressed those concerns. While he still had concerns about some language, he was in favor of sending the bill to the 14th order for amendments.

MOTION:

Senator Winder moved to send **H 314** to the floor with the recommendation it be referred to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion.

DISCUSSION:

Senator Bernt expressed his favor to send the bill to the 14th order.

Senator Toews shared his family loved the local public library. However, they spent less and less time there after one of his children brought him a graphic novel. The parents showed the librarian and said it was not appropriate for children. A few weeks later the book was still in the shelves. After that, his family did not feel the library was as safe a place for the children to go without supervision. He believed the result of this bill was to make libraries and schools a safe place for children, where parents could be confident and comfortable about their children not being exposed to inappropriate content. **Senator Toews** reiterated, there was not talk of burning or banning of books. This legislation was to protect innocent, vulnerable children and he was in support.

Senator Wintrow repeated that violent pornography was not appropriate. Her

reservation was the private cause of action and the broad language on page 2. On page 1, line 22 a definition had the word "homosexuality," which was an identity. She noted the word "heterosexuality" was not listed in the bill. She wanted to legitimize testimony referencing those concerns.

Senator Ruchti expressed misgivings about the legislation presenting fiction in the way kids grew up. He acknowledged the challenges he faced growing up were different when compared to what children face growing up today. He suggested children might be exposed to things their parents were not comfortable with that challenged their moral upbringing. He stated it was part of life to face challenges. He was concerned about allowing a subset of society to establish morals the rest of society had to live with. That was not democracy. He admitted everyone had different tolerances and everyone raised their children in their own way. He perceived this bill created a nanny state and dictated issues to prude standards in the community. He thought that was unfair to those who did not see life the same way. He stated he visited with librarians to discuss these types of bill and was satisfied with the way the libraries handled things. He commented there were processes in place at libraries to challenge books. Regarding the private cause of action, it did not require the parents to work with the library to solve the problem before filing a lawsuit. That concerned him and he would vote against the motion. He believed the bill should die in the Committee.

VOTE: The motion carried by **voice vote**. **Senators Wintrow** and **Ruchti** requested to be recorded as voting no

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 10:07 A.M.

Senator Guthrie
Chair

Joyce Brewer
Secretary